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on Employee Benefits

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and the  
American College of  
Employee Benefits Counsel

The 15th Annual National Institute on

# Health and Welfare Benefit Plans: Responding to Change

## October 21-22, 2004

The Park Hyatt Washington  
Washington, DC

*Early Bird Registration September 22nd*

*Hotel Registration September 22nd*

[www.abanet.org/jceb](http://www.abanet.org/jceb)



12.33 CLE Credit Hours have been requested from 60-minute states and  
14.80 CLE Credit Hours have been requested from 50-minute states

## THURSDAY • OCTOBER 21, 2004

7:00 **Registration and Networking Breakfast**

7:15 **Optional Session**

### **The Nuts and Bolts of ERISA Health Plans**

This optional session is a basic overview of the key legal issues affecting ERISA health and welfare plans. It is designed for people relatively new to the benefits area or for those who simply want a quick refresher on the rules and legal issues.

**Phyllis C. Borzi**, *O'Donoghue & O'Donoghue LLP*

**Richard L. Menson**, *McGuireWoods LLP*

9:00 **Break**

9:15 **Welcoming Remarks from Co-Chairs**

**Phyllis C. Borzi**, *O'Donoghue & O'Donoghue LLP*

**Susan J. Daley**, *Perkins Coie LLP*

**Richard L. Menson**, *McGuireWoods LLP*

9:25 **Federal Legislative Update: What's Been Passed? What's on the Horizon?**

Will Congress revisit some of the issues raised in the Medicare Modernization Act? What's the latest on drug reimportation legislation? Benefit mandates? Mental health parity? Medical error and drug safety issues? Expanding coverage to the uninsured? Other proposals affecting employer-sponsored plans? Will the Supreme Court decision in *Aetna v. Davila* breathe new life into the Patients' Bill of Rights? How will the outcome of the election affect next year's Congressional priorities? This session teams two key Congressional health staffers for a frank bipartisan bicameral assessment of Congressional activity and inactivity of interest to employers and other plan sponsors, health plans, and consumers.

Moderator: **Phyllis C. Borzi**, *O'Donoghue & O'Donoghue LLP*

Speakers: **Dean Rosen**, *Health Policy Advisor, Office of the Senate Majority Leader, U.S. Senate*

**Bridgett Taylor**, *Committee on Commerce, Minority Staff, U.S. House of Representatives*

10:15 **Break**

10:30 **HSAs, HRAs and Other New Approaches to Delivering Health Benefits**

The past few years have seen renewed interest in more individualized types of vehicles for financing and providing health benefits to employees. What are these new approaches? What are their strengths and limitations? How are employers reacting? Will they save money for employers? Will they help lower overall health care costs or just shift a greater proportion of the costs to employees, or both? What are the longer term implications for employers, employees and the number of uninsured?

This session is presented in two parts. **Part I** features a panel of government speakers focusing on these new vehicles and their governing rules. **Part II** features private practitioners, including in-house counsel, focusing on employer responses to these new approaches: how do employers and other plan sponsors view them, what types of planning opportunities do they represent, and what challenges might be faced by employers who want to offer them to their employees?

### **Part I: What are the New Rules?**

Moderator: **Richard L. Menson**, *McGuireWoods LLP*

Speakers: **Harry Beker**, *Branch Chief, Health & Welfare Branch, Office of Associate Chief Counsel, (Tax-Exempt and Government Entities Division), Internal Revenue Service*

**Suzanne M. Adelman**, *Pension Law Specialist, Office of Regulations and Interpretations, Employee Benefits Security Administration (EBSA), U.S. Department of Labor*

**Kevin Knopf**, *Attorney-Advisor, Benefits Tax Counsel, U.S. Department of the Treasury*

11:20 **Part II: Do You Need to Redesign Your Plan?**

Moderator: **Susan J. Daley**, *Perkins Coie LLP*

Speakers: **Tami L. Graham**, *Intel Corporation*

**T. David Cowart**, *Jenkins & Gilchrist PC*

# NATIONAL INSTITUTE AGENDA

## 12:10-1:45 Luncheon Address: Are Consumers Ready for Today's Health Care Choices?

Increasingly consumers are expected to take an active role in health-care decision making. Decisions can range from selecting a health plan or a primary care physician to determining when a loved one is no longer able to care for himself or herself at home. Although written information is often available describing these choices, including in electronic media, many consumers score poorly on objective measures of literacy and may be overwhelmed trying to absorb and analyze this information. Joyce Dubow, who recently authored a paper on health literacy and the prerequisites for informed health care decision making, will discuss this important topic and what it means for employer-sponsored health plans.

Speaker: **Joyce Dubow**, *AARP Public Policy Institute*

## 2:00-3:55 Concurrent Breakout Sessions

### 2:00–2:55 Recent COBRA Developments

Final Department of Labor regulations impose new COBRA notice requirements. This session focuses on the impact of these final COBRA regulations and the administrative issues arising in complying with the new notice requirements, recent case law and the applicability of COBRA to new approaches to the delivery of health benefits.

Moderator: **Susan J. Daley**, *Perkins Coie LLP*

Speaker: **Paul M. Hamburger**, *McDermott Will & Emery LLP*

### Cafeteria Plans and Other Tax Issues for Health and Welfare Plans

Choice is very important for health and welfare benefits. This session focuses on structuring, administrative and tax issues with cafeteria plans, as well as tax issues in providing health and welfare benefits.

Moderator: **Martha L. Hutzelman**, *Ice Miller*

Speaker: **T. David Cowart**, *Jenkins & Gilchrist PC*

### New Strategies for Providing Retiree Medical Benefits

With the continued escalation of health care costs and the advent of HRAs, HSAs and the new Medicare Prescription Drug Act, are employers rethinking their approach to providing retiree medical benefits?

Moderator: **Carol A. Weiser**, *Sutherland, Asbill & Brennan LLP*

Speakers: **Gale Arden**, *Director, Private Health Insurance Group, Centers for Medicare and Medicaid Services (CMS)*  
**Sally Doubet King**, *McGuireWoods LLP*

### Consumer Driven Health Plans: Key Issues for Employers

As more employers consider moving toward some form of consumer-driven health plans, what are the key design, workforce and legal issues they need to consider? This session is designed as a hands-on workshop with an in-house corporate expert regarding what employers need to focus on before, during and after they decide to implement a consumer-driven health plan.

Moderator: **Richard L. Menson**, *McGuireWoods LLP*

Speaker: **Tami L. Graham**, *Intel Corporation*

### 3:00–3:55 Recent COBRA Developments

Moderator: **Susan J. Daley**, *Perkins Coie LLP*

Speaker: **Paul M. Hamburger**, *McDermott Will & Emery LLP*

### Cafeteria Plans and Other Tax Issues for Health and Welfare Plans

Moderator: **Martha L. Hutzelman**, *Ice Miller*

Speaker: **T. David Cowart**, *Jenkins & Gilchrist PC*

### New Strategies for Providing Retiree Medical Benefits

Moderator: **Carol A. Weiser**, *Sutherland, Asbill & Brennan LLP*

Speakers: **Gale Arden**, *Director, Private Health Insurance Group, Centers for Medicare and Medicaid Services (CMS)*  
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### Consumer Driven Health Plans: Key Issues for Employers

Moderator: **Richard L. Menson**, *McGuireWoods LLP*

Speaker: **Tami L. Graham**, *Intel Corporation*

3:55

**Break**

# NATIONAL INSTITUTE AGENDA

- 4:15 **Ethical Considerations in Health and Welfare Benefit Plans**  
The current health care delivery system poses many ethical challenges to employers and plan sponsors designing and maintaining health and welfare plans for their employees. Issues such as the selection of providers or networks, financial incentives and disclosure, the scope of covered treatment, and confidentiality of patient information may raise important ethical as well as fiduciary questions. This session will discuss the principles of legal ethics and rules that may apply to these situations.  
Moderator: **Richard L. Menson**, *McGuireWoods LLP*  
Speakers: **Tami L. Graham**, *Intel Corporation*  
**Martha L. Hutzelman**, *Ice Miller*  
**Sally Doubet King**, *McGuireWoods LLP*  
**David R. Levin**, *Wiley Rein & Fielding LLP*  
**Carol A. Weiser**, *Sutherland Asbill & Brennan LLP*

## FRIDAY • OCTOBER 22, 2004

- 8:00 **Registration and Networking Breakfast**
- 8:20 **Hot Topics in Health and Welfare Plan Litigation**  
Although most eyes were focused on the Supreme Court in its consideration of *Aetna v. Davila* in resolving questions related to whether HMOs could be sued under state tort laws, a number of important ERISA cases involving health and disability benefit claims, standard of review, and remedies were also decided by lower courts. This session focuses on some of the most significant lower court cases decided this year as well as the implications of the Supreme Court's unanimous opinion in *Davila* and the Ginsburg/Breyer concurrence.  
Moderator: **Richard L. Menson**, *McGuireWoods LLP*  
Speakers: **Mary Ellen Signorille**, *AARP Foundation Litigation*  
**Steven D. Spencer**, *Morgan Lewis & Bockius LLP*
- 10:00 **Break**
- 10:15 **Covering the Uninsured: Examining State Initiatives**  
Since the collapse of federal efforts to enact national health care reform in 1994, a number of states have moved forward to adopt their own plans for reducing the number of uninsured individuals in their own jurisdictions, including Medicaid expansions, establishing voluntary health insurance programs that small employers or individuals can purchase, and tax incentives and subsidy programs for small employers and individuals. Recently California adopted a pay-or-play program covering employees of large and medium-sized employers and Wisconsin is working on a single-payor approach. One of the nation's leading experts on what the states are doing will discuss these various programs and their impact on employer-sponsored plans.  
Moderator: **Phyllis C. Borzi**, *O'Donoghue & O'Donoghue LLP*  
Speaker: **Deborah J. Chollet**, *Mathematica Policy Research, Inc.*
- 11:10 **Providing Benefits to Domestic Partners: Evolving Legal Issues**  
Who is a "spouse" for purposes of ERISA welfare plans? This session focuses on the developments in the definition of spouse and marriage and their impact on welfare plans as well as the tax and administrative issues in providing benefits to domestic partners.  
Moderator: **Susan J. Daley**, *Perkins Coie LLP*  
Speakers: **Thomas W. Meagher**, *Aon Consulting*  
**Frances E. Snyder**, *Marriott International, Inc.*
- 12:00 **Lunch (On your own)**
- 1:30–3:30 **Concurrent Breakout Sessions**
- 1:30–2:25 **Litigating Welfare Plan Claims**  
What you do during the benefit claims procedure can make or break your case, whomever you represent. This session focuses on what you can do during the benefit claims procedure to enhance your case and approaches to welfare plan claim litigation once a lawsuit is filed.  
Moderator: **Carol A. Weiser**, *Sutherland Asbill & Brennan LLP*  
Speakers: **Mary Ellen Signorille**, *AARP Foundation Litigation*  
**Steven D. Spencer**, *Morgan Lewis & Bockius LLP*

## Implementing Medical Privacy and Security

Even though the compliance dates for HIPAA's privacy rules have come and gone, lingering implementation questions remain and new issues are frequently raised. In addition, the deadline for compliance of the new security rules is also approaching. Taking the lead primarily from the audience regarding the topics to be discussed in this roundtable session, experienced practitioners will share their best thinking on how best to address them.

Moderator: **Phyllis C. Borzi**, *O'Donoghue & O'Donoghue LLP*

Speakers: **Kathryn Bakich**, *The Segal Company*  
**Jodi Goldstein Daniel**, *Attorney Advisor, Office of the General Counsel, Civil Rights Division, U.S. Department of Health & Human Services*  
**Sally Doubet King**, *McGuireWoods LLP*

## HIPAA Insurance Reform Update

HIPAA included pre-existing condition exclusion period limitations, special enrollment periods under certain circumstances and prohibition of discrimination against individual participants and beneficiaries based on health status. The Newborns' and Mothers' Health Protection Act, the Mental Health Parity Act and the Women's Health and Cancer Rights Act also impose specific requirements on health plans. A panel of government speakers from the three agencies dealing with these requirements will provide an update on these requirements and discuss the practical issues plans have encountered dealing with these requirements.

Moderator: **Susan J. Daley**, *Perkins Coie LLP*

Speakers: **David Mlawsky**, *Health Insurance Specialist, Private Health Insurance Group, Centers for Medicare and Medicaid Services (CMS)*  
**Amy J. Turner**, *Senior Health Law Specialist, Office of Health Plan Standards and Compliance Assistance, Employee Benefits Security Administration (EBSA), U.S. Department of Labor*  
**Russell E. Weinheimer**, *Senior Attorney, Health & Welfare Branch, Office of Chief Counsel, (Tax Exempt & Government Entities Division), Internal Revenue Service*

2:25 **Break**

## 2:35-3:30 **Managing Your Health & Welfare Benefit Plans Prudently: Fiduciary Concerns**

Although most plan sponsors think the majority of activities they perform regarding their health plan issues involves settlor functions, a number of fiduciary issues also may be involved. As a threshold matter, this session will focus on where the line between settlor and fiduciary functions may be drawn. In addition, other potential fiduciary issues may need to be considered, such as: what vendor through which to offer benefits, to what extent does the financial ability of the employer affect the prudence of that choice, and how should vendor activities be monitored when functions are outsourced.

Moderator: **Phyllis C. Borzi**, *O'Donoghue & O'Donoghue LLP*

Speaker: **David R. Levin**, *Wiley Rein & Fielding LLP*

## Implementing Medical Privacy and Security

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Moderator: **Kathryn Bakich**, *The Segal Company*

Speakers: **Jodi Goldstein Daniel**, *Attorney Advisor, Office of the General Counsel, Civil Rights Division, U.S. Department of Health & Human Services*  
**Sally Doubet King**, *McGuireWoods LLP*

## Post-Great-West Strategies

Is subrogation still available to health plans after *Great-West* and its progeny? This session will address subrogation issues and how employers are modifying their health plans and subrogation practices in response.

Moderator: **Susan J. Daley**, *Perkins Coie LLP*

Speakers: **Jack B. Helitzer**, *Counselor-at-Law*  
**Frances E. Snyder**, *Marriott International, Inc.*

3:30 **Adjourn**

# HIGHLIGHTS OF THIS NATIONAL INSTITUTE

## Attend the program, and learn what you need to know about:

- New Legislation (including the impact of the Medicare prescription drug legislation)
- Implementing the New COBRA Notice Requirements
- Latest Developments Regarding Domestic Partner Benefits under Welfare Plans
- The Effects of the Medical Privacy Rules on Group Health Plans, Plan Sponsors and Providers
- Strategies for Employers Regarding the Use of Health Reimbursement Arrangements (HRAs)
- Ethical Issues in Health and Welfare Plans

## Who Should Attend?

- All lawyers seeking a comprehensive overview of health and welfare benefit plans and health care reform
- Practitioners requiring information directly from the Administration, Capitol Hill, Internal Revenue Service, EEOC, Department of Labor, Department of Health and Human Services, and Centers for Medicare and Medicaid Service (CMS)
- Personnel managers, human resource professionals, accountants, and actuaries involved in the establishment or administration of these plans
- Health care professionals who want timely legislative and litigation updates, and information on current practices and health care reform

## What Past Participants Have Said ...

“The program provided a broad array of the most current information on health and welfare plans. I found it useful in that it not only covered basic information about ERISA plans, but also provided great detail about important compliance issues.”

- **Lanhee J. Chen**, *The ERISA Industry Committee*

“Lots of good, timely information from experts in the field. Good balance of practitioners and government officials and good summary of the most important case law.”

- **Phyllis E. Feibus**, *Blue Cross Blue Shield of Delaware*

A perfect seminar for the Health and Welfare Benefit Lawyer. I learned all the new laws and had a volume of valuable information to take home and share with other attorneys in my office.”

- **Rosanne Lienhard**, *IBP, Inc.*

“Good information, great for updating your knowledge. This is a great way to interact with other practitioners and appropriate government regulators that those not from DC generally do not have!”

- **Thomas A. Conlon, Jr.**, *Hinman, Howard & Kaltell, LLP*

“Knowledgeable speakers, comfortable atmosphere, handbook is excellent!”

- **Cindy Dunwater**, *IFCBP*

# NATIONAL INSTITUTE FACULTY

**Suzanne M. Adelman**

*Pension Law Specialist  
Office of Regulations and Interpretations  
Employee Benefits Security Administration (EBSA)  
U.S. Department of Labor  
Washington, DC*

**Gale Arden**

*Director, Private Health Insurance Group  
Centers for Medicare and Medicaid Services (CMS)  
Baltimore, MD*

**Kathryn Bakich**

*The Segal Company  
Washington, DC*

**Harry Beker**

*Branch Chief, Health and Welfare Branch, Office of Associate Chief Counsel (Tax-Exempt and Government Entities Division)  
Internal Revenue Service  
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**Phyllis C. Borzi**  
*Program Co-Chair*

*O'Donoghue & O'Donoghue LLP  
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**Deborah J. Chollet**

*Mathematica Policy Research, Inc.  
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*Attorney Advisor, Office of the General Counsel  
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**Joyce Dubow**

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**Bridgett Taylor**

*Committee on Commerce  
Minority Staff  
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Internal Revenue Service  
Washington, DC*

**Carol A. Weiser**

*Sutherland, Asbill & Brennan LLP  
Washington, DC*

# NATIONAL INSTITUTE INFORMATION

## TUITION

Attend the entire two-day program, the luncheons, the reception, each breakfast, and network with other registrants and faculty. Registrations must be postmarked, e-mailed or faxed by **Wednesday, September 22** to receive the discount.

### Early Bird Registration - September 22

**\$945** General Public

**\$845** ABA Member (*\$100 Savings - join a Section, and save even more!*)

**\$745** Sponsoring Section Member (*\$200 Savings*)

### Full Tuition - After September 22

**\$995** General Public

**\$895** ABA Member (*\$100 Savings - join a Section, and save even more!*)

**\$795** Sponsoring Section Member (*\$200 Savings*)

### On-Site Tuition

**\$1045** General Public

**\$945** ABA Member (*\$100 Savings - join a Section, and save even more!*)

**\$845** Sponsoring Section Member (*\$200 Savings*)

## ADDITIONAL SAVINGS

Register three or more people for the entire program, and receive an additional \$50 reduction in your program tuition! Every registrant will receive a copy of the informative course materials book, which can be used as a comprehensive resource long after the program is held. Each registrant will also be eligible for MCLE accreditation within those states that require continuing legal education.

## SCHOLARSHIPS

Financial scholarships to defray tuition expenses for full-time LL.B. candidates only are available for this program. To request an application or receive additional information, contact Karen Case at 202.662.8641. Scholarship applications must be received in the ABA offices no later than thirty days prior to the program presentation.

## MCLE

Required sponsor documentation has been forwarded to and credit requested from MCLE states with general requirements for lawyers. 12.33 hours of credit, including 1 hour of ethics credit, have been requested from states that recognize a 60-minute credit hour. 14.80 hours of credit, including 1.2 hours of ethics credit, from those states granting credit hours on a 50-minute basis (14 hours, including 1 hour of ethics credit, from NY State). Lawyers seeking credit in Pennsylvania must pay a fee of \$1.50 per credit hour directly to the PA CLE Board. The ABA pays applicable fees in other states where the sponsor is required to do so. In states where a late fee may become applicable, the ABA pays this fee as well. Please be aware that each state has its own rules and regulations including its definition of CLE as well as "Ethics". Therefore, certain programs may not receive credit in some states. Please check with your state agency for confirmation of general as well as ethics approval for

any program. You may contact the ABA Service Center at (800) 285-2221 or the Center for CLE at (312) 988-6217 for confirmation of the number of credits approved by any particular state. This transitional CLE program has been approved for all New York licensed attorneys in accordance with the requirements of the New York CLE Board for NYMCLE.

## QUESTIONS?

Please fax your questions to Karen Case, before October 21, to 202.662.8682, or ask the speakers directly during the program presentation.

## SERVICES FOR PERSONS WITH DISABILITIES

If special arrangements are required, please contact Karen Case at 202.662.8641. Reasonable advance notice is requested.

## CANCELLATIONS

Refunds will be made only if requests are received by **Wednesday, September 22**, and a \$50 administrative fee will be charged. **No refunds will be made for requests received after Wednesday, September 22.** Substitute registrants for National Institutes are welcome.

## PROGRAM CONFIRMATION

Written confirmation of your registration will be sent to you upon receipt. Please bring it with you to the National Institute as proof of registration. If you do not receive the confirmation notice prior to the presentation, please call the ABA (202.662.8641) at least 24 hours in advance to confirm that your registration was received and the program is being held as scheduled.

## HOTEL INFORMATION

### DEADLINE FOR HOTEL RESERVATIONS: Wednesday, September 22

You may make hotel reservations at the Park Hyatt Washington, 1201 - 24th Street, NW, Washington, DC 20037. A limited number of rooms have been set aside for National Institute registrants at \$279 for a deluxe king. All room rates are subject to city occupancy and sales tax. Unclaimed rooms will be released on **Wednesday, September 22**, after which the hotel will accept reservations on a space-available basis only. All reservations must be guaranteed with a major credit card. **To register at the hotel, call the hotel directly at (202) 789-1234 or (800) 233-1234, and be sure to mention the ABA Health and Welfare Benefit Plans National Institute - to receive the special discounted rate.**

## AIRLINE INFORMATION

The American Bar Association has secured discounted rates with American, Delta, and US Air for all National Institute participants. To make reservations, or for more information call:

**American Airlines** 800.433.1790

ABA Account 16666

**Delta Airlines** 800.241.6760

ABA Account 189419A

**US Air** 877.874.7687

ABA Account 36632473

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### FULL TUITION - After September 22

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ABA # \_\_\_\_\_
- \$795** Sponsoring Section Member (*\$200 Savings*)  
ABA # \_\_\_\_\_

### ON-SITE TUITION

- \$1045** General Public
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(*\$100 Savings - join a Section, and save even more!*)  
ABA # \_\_\_\_\_
- \$845** Sponsoring Section Member (*\$200 Savings*)  
ABA # \_\_\_\_\_
- Three or more people have registered with me; please apply the \$50 tuition reduction to the tuition rate indicated above.

Send me the **Health and Welfare Benefit Plans Audiotope Package, PC5470562P**, (tapes and course materials) available three weeks following the presentation at the special price of \$649.95, including postage and handling\*.

Send me the **Health and Welfare Benefit Plans Course Materials, PC5470561** at the special pre-publication price of \$267.95, including postage and handling\*.

Send me the JCEB calendar for upcoming Employee Benefits Membership Events

### TO REGISTER

**Mail:** American Bar Association  
JCEB Registrar  
740 15th Street, NW, 10th Floor  
Washington, DC 20005-1022

**Fax:** 202.662.8682 (*credit card only*)

### PAYMENT (*must include one of the following*)

- Check *made payable to American Bar Association-JCEB*
- MasterCard
- VISA
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- I am an ABA member, but want a further reduction on my tuition for this program. Please enroll me into the Section listed below; I've enclosed a separate check.
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  - Section of Health Law, \$50
  - Section of Labor and Employment Law, \$40
  - Section of Real Property, Probate and Trust Law, \$50
  - Section of Taxation, \$50
  - Section of Tort Trial and Insurance Practice, \$50

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**November 4-5, 2004**

19th Annual National Institute on  
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New York, NY

**November 11-12, 2004**

14th Annual National Institute on  
**ERISA Litigation**

Chicago, IL

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